

**DECISION.**

19600 Mr. Eisen  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-203858**DATE:** September 29, 1981**MATTER OF:** Fire & Technical Equipment Corp.**DIGEST:**

Foreign bidders may not be disqualified for award simply because they may have some competitive advantage as the result of not being subject to United States law. Once the differentials are applied pursuant to the Buy American Act--or, as here, the act is waived as being inconsistent with the public interest--and the foreign firm is the low, responsive and responsible bidder, award may be made to it.

The Fire & Technical Equipment Corp. (Fire-Tec) protests the award of a contract for 15 fire fighting trucks to any foreign firm under invitation for bids (IFB) DAAJ09-81-B-0496 issued by the U.S. Army Troop Support and Aviation Materiel Readiness Command (TSARCOM). Fire-Tec alleges that foreign firms have a competitive advantage over domestic firms because they are not subject to laws and regulations with which domestic firms must comply. For the reasons discussed below, the protest is denied.

Bid opening was on June 18, 1981, and nine bids were received. TSARCOM determined that the low, responsive bidder is Pierre Thibault Trucks, Inc. (Pierre), a Canadian firm. Pierre's bid certifies that the country of origin of the fire fighting trucks it offers is Canada and that these supplies qualify as "participating country end products." The IFB clause entitled "Buy American Act, Trade Agreements Act, and the Balance of Payments Program" states that a "participating country end product" is one type of a "qualifying country end product." Paragraph (a) of this clause provides "a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as qualifying country end products or as designated country end products."

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Fire-Tec asserts that the bid of any foreign firm is not responsive because it fails to comply with all of the material aspects of the IFB. See Defense Acquisition Regulation (DAR) § 2-301 (1976 ed.). The protester maintains that foreign firms are not subject to the same inspection, equal employment, environmental, and other requirements imposed on domestic firms by United States law and that domestic bidders consequently incur greater costs, resulting in unequal competition and destroying the integrity of the procurement process.

We have considered arguments similar to Fire-Tec's in the past. In B-175833, September 25, 1972, for example, a domestic bidder argued that award to the low, foreign bidder would be "contrary to public policy as it would impose statutory conditions and responsibilities on domestic firms which would be in excess of the conditions and responsibilities asked of the foreign firm \* \* \*." The foreign firm, the protester argued, "represents unfair competition by virtue of the fact that he is not required to abide by the minimum wage provisions of the Walsh-Healey Act, and is not subjected to the same income and corporate taxes as [domestic] contractors."

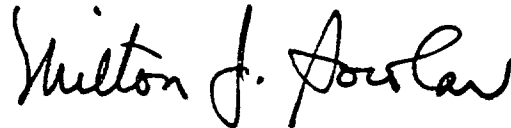
In denying the protest, we pointed out that the possession of some economic advantage such as the inapplicability of minimum wage standards provides no basis for rejecting a foreign bid. Reflected in our decision was the fact that there is no Federal law which seeks to equalize the "competitive advantage" which a foreign firm may possess, other than the Buy American Act, 41 U.S.C. §§ 10a-d(1976). If, after the requirements of the Buy American Act have been satisfied, the foreign bidder remains low, is found to be responsible and its bid is responsive, then there is no further barrier to an award to that firm.

Section 10a of the Buy American Act requires Government agencies to purchase for public use only American manufactured and produced end products, "unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable \* \* \*." 41 U.S.C. § 10a.

There is no question but that Pierre's bid is exempt from the application of the Buy American Act. Pierre has certified that its supplies are "participating country

end products." A "participating country" refers to a North Atlantic Treaty Organization country which has entered into a Memorandum of Understanding with the United States and for which the Secretary of Defense has made a blanket Determination and Finding waiving the Buy American Act restrictions. DAR § 6-001.5(c). Since Canada is a participating country, DAR § 6-1401, the regulations provide that the restrictions of the Buy American Act and the Balance of Payments Program are waived in the evaluation of bids from Canadian sources and such bids are to be treated like those from domestic firms. DAR § 6-1403.1(c).

The protest is denied.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive, flowing style.

Acting Comptroller General  
of the United States